

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**JESUS LINARES,**

**Plaintiff,**

**-against-**

**LARRY RICHARDS, et al.,**

**Defendants.**  
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**MEMORANDUM  
AND ORDER**

**08-CV-3243 (RRM)**

**ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:**

Plaintiff has requested a premotion conference in advance of his motion to dismiss defendants' second through fourth counterclaims, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure. See Letter to the Court from Jerauld E. Brydges (Jan. 11, 2010), ECF Docket Entry ("D.E.") 42. Defendants respond that plaintiff "raises factual issues with regard to the adequacy of the defendants' counterclaims." Letter to the Court from Robert W. Keddie, III (Jan. 19, 2010), at 1, D.E. #43. This Court agrees.

Moreover, fact discovery is scheduled to end on March 17, 2010; it is extremely unlikely that any Rule 12(b) motion would be fully submitted -- let alone ruled upon -- before the close of fact discovery. It is not the Court's practice to stay discovery during the pendency of motions to dismiss. Therefore, under these circumstances, the more efficient way to proceed is to have the parties present all their legal and factual arguments in the context of a motion for summary judgment at the conclusion of fact discovery.

For the foregoing reasons, defendants' request for a premotion conference is premature and therefore is denied without prejudice.

**SO ORDERED.**

**Dated: Brooklyn, New York  
January 29, 2010**

**ROANNE L. MANN  
UNITED STATES MAGISTRATE JUDGE**